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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12
13 SAN FRANCISCO DIVISION

14
15 IN RE: VOLKSWAGEN “CLEAN
16 DIESEL” MARKETING, SALES
17 PRACTICES, AND PRODUCTS
18 LIABILITY

19 MDL No. 2672 CRB (JSC)

20 This Document Relates to:
**21
22 Respondent, Maria
Christiansen’s First
Return to the Writ**

23
Porsche Gasoline Litigation

24
Christiansen v. Volkswagen AG, et al.
(Notice of Related Case – Docket 8115)

25
26 **TO THIS HONORABLE COURT, ALL PARTIES AND TO THEIR**
27
ATTORNEYS OF RECORD:

1 **COMES NOW**, Plaintiff/Respondent, MARIA CHRISTIANSEN, and
2 returns to the writ for a first time.
3

4 On September 8, 2023, underlying Plaintiff/writ Respondent,
5 CHRISTIANSEN timely dismissed her Orange County Superior Court Case,
6 according to the terms of the Class Settlement Agreement forced upon her.
7

9 On October 6, 2023, Defendant/Petitioner, PORSCHE filed a Memorandum
10 of Costs in the underlying Orange County Superior Court Case. (Exhibit 1)

12 In response to PORSCHE'S costs memo, on October 17, 2023,
13 CHRISTIANSEN filed her own Memorandum of Costs in the Orange County
14 Superior Court case, but only for pre-writ costs.
15

17 On October 23, 2023, CHRISITIANSEN moved to strike PORSCHE'S
18 memo of costs. This hearing is scheduled for May 13, 2024.
19

21 On November 17, 2023, Defendant/Petitioner PORSCHE filed a Motion to
22 Strike Plaintiff's Costs. (Exhibit 2) This hearing is scheduled for June 3, 2024.
23

24 By seeking costs PORSCHE is deliberately seeking to breach the Class
25 Settlement Agreement, which PORSCHE forced upon Plaintiff via this writ:
26

28 **“....10.14. Released Parties’ Releases of Settlement Class
Representatives, the Class, and Counsel.** Upon the Effective Date,

1 ***Released Parties absolutely and unconditionally release and forever***
2 ***discharge*** the Settlement Class Representatives, ***Class Members***,
3 Defendants' counsel and Class Counsel ***from any and all claims***
4 ***relating to the institution or prosecution of the Action.***" (Declaration
5 of John Mahan, Exhibit 2 – PORSCHE SPORT + Settlement, Page
6 24, Subparagraph 10.14, Lines 22=-25) (***Emphasis added***)

7 If PORSCHE prevails, a second return to the writ will be necessary in that
8 PORSCHE will have violated the material terms of the Settlement Agreement it
9 forced upon Christiansen by seeking costs (13 times that of the Class Settlement).

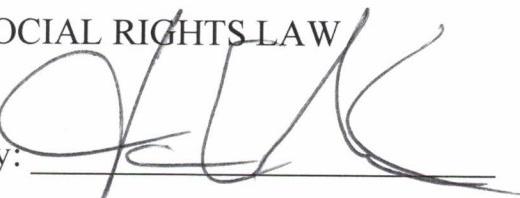
10 The success of PORSCHE'S anticipatory breach will only be known after
11 the May and June 3, 2024 Motions to Strike by PORSCHE and CHRISTIANSEN
12 have been heard.

13 CHRISTIANSEN will return to the writ a second time, once the results of
14 PORSCHE'S anticipatory breach is known.

15 In the meantime, Plaintiff continues to incur costs and expenses associated
16 with this vehicle.

17 Respectfully Submitted:

18 Dated: 12-30-2023

20 SOCIAL RIGHTS LAW
21 
22 By: _____

23 JOHN MAHAN, SOCIAL
24 RIGHTS LAW, Attorneys for
25 MARIA CHRISTIANSEN

ATTORNEY OR PARTY WITHOUT ATTORNEY Abtin Amir (SBN 305019); Ivana Saddigh (SBN 331685); Michael Baker (SBN312250) NAME: FIRM NAME: The Law Office of Abtin Amir, PC STREET ADDRESS: 4500 Park Granada, Suite 202 CITY: Calabasas TELEPHONE NO.: (818) 336-1324 E-MAIL ADDRESS: service@abtinamirlaw.com		STATE BAR NUMBER: STATE: CA ZIP CODE: 91302 FAX NO.:	FOR COURT USE ONLY
ATTORNEY FOR (name): Defendant, Porsche Cars North America, Inc.; and Newport Beach Cars, LLC			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: CENTRAL JUSTICE CENTER			
PLAINTIFF: MARIA CHRISTIANSEN DEFENDANT: Porsche Cars North America, Inc.; and Newport Beach Cars, LLC			
MEMORANDUM OF COSTS (SUMMARY)		CASE NUMBER: 30-2022-01267021-CU-PA-CJC	

The following costs are requested:

	TOTALS
1. Filing and motion fees	\$ 2,377.50
2. Jury fees	\$
3. Jury food and lodging	\$
4. Deposition costs	\$
5. Service of process	\$
6. Attachment expenses	\$
7. Surety bond premiums	\$
8. Witness fees	\$
9. Court-ordered transcripts	\$
10. Attorney fees (<i>enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required</i>)	\$
11. Court reporter fees as established by statute	\$
12. Models, enlargements, and photocopies of exhibits	\$
13. Interpreter fees	\$
14. Fees for electronic filing or service One Legal eFiling and eService fees	\$ 275.68
15. Fees for hosting electronic documents	\$
16. Other Demurrer hearing reservation fee	\$ 123.30

TOTAL COSTS	\$ 2,776.48
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I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: October 6, 2023

Abtin Amir

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF DECLARANT)

Exhibit 2 – DEFENDANT/PETITIONER PORSCHE’S MOTION TO STRIKE PLAINTIFF’S MEMORANDUM OF COSTS (ORANGE COUNTY CASE)

1 THE LAW OFFICE OF ABTIN AMIR, PC
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4 4500 Park Granada, Suite 202
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Tel No: (818) 336-1324

5 Attorneys for Porsche Cars North America, Inc., and Newport
6 Beach Cars, LLC d/b/a Newport Auto Center
and d/b/a Porsche of Newport

7
8 SUPERIOR COURT OF CALIFORNIA
9
10 COUNTY OF ORANGE

11 MARIA CHRISTIANSEN,

12 Case No. 30-2022-01267021-CU-PA-CJC

13 Plaintiff,

14 v.
15
16

17 VOLKSWAGEN AG, PORSCHE AG,
18 PORSCHE CARS OF NORTH AMERICA,
DETLEV von PLATEN, an individual, AUTO
19 CENTER PORSCHE OF NEWPORT
BEACH, PACIFIC VW, PACIFIC PORSCHE,
BOSCH AUTOMOTIVE SERVICE
20 SOLUTIONS, INC., and DOES 1 Through 10,
21
22

23 Defendants.

24
25 DEFENDANTS PORSCHE CARS NORTH
AMERICA, INC., AND NEWPORT
BEACH CARS, LLC, AND NEWPORT
AUTO CENTER'S NOTICE OF MOTION
AND MOTION TO STRIKE PLAINTIFF'S
MEMORANDUM OF COSTS

26 [Filed concurrently with Declaration of Abtin
Amir and Proposed Order]

27 Hon. Judge David J. Hesseltine

28 Hearing: June 3, 2024
Time: 2:00 p.m.
Dept: C23

Reservation ID: 74141200

Date Action Filed: June 28, 2022

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 3, 2024, at 2:00 p.m., in Department C23 of the
3 Orange County Superior Court, or as soon thereafter as the Court schedules, Defendants Porsche
4 Cars North America, Inc., Newport Auto Center, and Porsche of Newport Beach (together,
5 “Defendants”) will, and hereby do, move this Court for an order striking or taxing Plaintiff Maria
6 Christiansen’s Memorandum of Costs pursuant to Code of Civil Procedure section 1032 because
7 Defendants, and not Plaintiff, are undeniably prevailing parties in this matter after Plaintiff was
8 forced to dismiss them with prejudice with nothing in exchange.

9 Defendants request this Court strike and/or tax all of the claimed costs, as they are
10 unrecoverable because Plaintiff is not a prevailing party.

11 This motion is based upon the attached memorandum of points and authorities, the
12 attached Declaration of Abtin Amir, and any further evidence or argument that may be filed in
13 support of any reply, any oral or documentary evidence that may be presented at the hearing, and
14 upon the entire record of the case.

15
16 Respectfully submitted on:
November 3, 2023

THE LAW OFFICE OF ABTIN AMIR, PC
Abtin Amir

17
18 By: /s/ Abtin Amir
Abtin Amir

19 Attorneys for Porsche Cars North America, Inc.,
20 and Newport Beach Cars, LLC d/b/a Newport Auto
Center and d/b/a Porsche of Newport

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Porsche Cars North America, Inc., and Newport Beach Cars, LLC d/b/a Newport
4 Auto Center and d/b/a Porsche of Newport, hereby move to strike Plaintiff's frivolous memorandum
5 of costs which she impermissibly filed after being forced to dismiss her entire case against all
6 defendants, including as against the moving Parties here with prejudice, with nothing having been
7 gained by Plaintiff as a result of this frivolous lawsuit which the courts have determined she had no
8 right to file in the first place, and nothing having been provided by moving Defendants. It is
9 indisputable that Defendants successfully defended this Action brought by Plaintiff Maria
10 Christiansen, and Defendants indisputably became the prevailing parties when Plaintiff was forced
11 to dismiss the entire action as to all defendants, including with prejudice as to the Moving Defendants
12 here. Rather than waste more of the Court's resources, the Parties agreed to stipulate to the dismissal,
13 but with moving Defendants expressly reserving the right to seek and recover their costs.

14 Indeed, Plaintiff's counsel was well aware of Defendants' intention to recover their costs and
15 potentially pursue a malicious prosecution action against Plaintiff and her counsel following the
16 dismissal of this frivolous Action, and even acknowledged in writing that Defendants were entitled
17 to recover their costs in this Action when he attempted to negotiate Defendants' waiver of their right
18 to recover their "fees and costs." (Amir Decl. ¶ 2, Exh. A [email from Plaintiff's counsel].) In an
19 email sent by Plaintiff's counsel to Defendants' counsel on August 7, 2023, Mr. Mahan said:

20 Given last Friday's Dismissal of Ms. Christiansen's Appeal and the class action
21 portions of her matter, I wanted to reach out and propose a Global Resolution to the
22 remainder of the case.

23 Ms. Christiansen is agreeable to filing a Global Dismissal in the Orange County
24 Case this week (meaning all parties and all causes of action), **in return for a waiver**
25 **of fees and costs from Defendants.**

26 (Amir Decl. ¶ 2, Exh. A [August 7, 2023 email from Plaintiff's counsel], emphasis added.)
27 Defendants expressly refused any such waiver, and Plaintiff nevertheless dismissed Defendants with
28 prejudice without having obtained *anything* from Defendants in exchange. Plaintiff had no choice,
29 as the federal court rejected each of Plaintiff's contentions, and this Court was positioned to dismiss
30 this entire action as a result.

1 Plaintiff's instant memorandum of costs serves only to further support Defendants'
 2 impending action for malicious prosecution against Plaintiff and her counsel, who initiated this
 3 lawsuit in bad faith, and who continue to abuse the civil process by filing a frivolous memorandum
 4 of costs and a motion to strike Defendants' memorandum of costs, despite Defendants having
 5 undeniably having prevailed against Plaintiff in all regards. Thus, Plaintiff's entire memorandum of
 6 costs must be stricken in its entirety, and appropriate sanctions be imposed by the Court for
 7 Plaintiff's abuse of the civil process.

8 **II. RELEVANT FACTUAL BACKGROUND**

9 Plaintiff Maria Christiansen brought this lawsuit, alleging that the emissions system of her
 10 Porsche 911 vehicle is not in compliance with applicable emissions laws. Plaintiff had submitted to
 11 this Court a First Amended Complaint and Declaration in which she perjured herself in raising
 12 additional claims by falsely declaring that defense counsel failed to advise her of certain things via
 13 email, or to meet and confer about other things via email, which defense counsel established was
 14 demonstrably false and produced the emails in which defense counsel had done exactly the things
 15 that Plaintiff falsely claimed were not done. Plaintiff likewise attempted to prove that she had timely
 16 opted out by producing a highly suspect "screenshot" of an email she claims to have sent, which the
 17 federal court also was not persuaded by, despite defense counsel's numerous requests to Plaintiff
 18 and her counsel to produce a copy of the actual email in its native form, and not a "screenshot" of
 19 an email allegedly sent which can be easily manipulated.

20 In any event, as established by the federal court retaining jurisdiction over Plaintiff's claims,
 21 Plaintiff failed to timely opt out of the class action settlement and related order, and therefore had
 22 no right whatsoever to bring this duplicative lawsuit in state court alleging the exact same claims
 23 against the same defendants. This Court had stayed this action, over Plaintiff's objections, while
 24 the federal court decided that issue and ultimately issued an order barring Plaintiff from continuing
 25 to pursue her claims here in this Court. As a result, and in an effort to avoid burdening this Court
 26 even further by asking this Court to dismiss the case by way of motion or other ruling, the Parties
 27 agreed to stipulate to the dismissal of the entire case, **including dismissing Moving Defendants**
 28 **with prejudice in exchange for absolutely nothing in return.**

1 On September 8, 2023, Plaintiff's counsel and Defendants' counsel appeared at a status
 2 conference before this Court where they advised the Court that they intended to stipulate to have the
 3 stay lifted and to have the case dismissed, at which point Plaintiff's counsel expressly advised the
 4 Court that Defendants were adamant about recovering their litigation costs in this Action following
 5 the dismissal. (Amir Declaration ¶¶ 3-4.) ***Plaintiff did not receive any monetary recovery or other***
 6 ***form of relief in this matter from any defendant.*** (Amir Declaration ¶ 4.) On October 3, 2023, the
 7 Court ordered the entire case dismissed.

8 **III. PLAINTIFF'S MEMORANDUM OF COSTS MUST BE STRICKEN IN ITS**
9 ENTIRETY BECAUSE DEFENDANTS, AND NOT PLAINTIFF, ARE
PREVAILING PARTIES

10 Plaintiff's memorandum of costs must be stricken in its entirety because Defendants, and not
 11 Plaintiff, are obviously the prevailing parties.

12 California Code of Civil Procedure section 1032 controls and provides that, “[e]xcept as
 13 otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover
costs in any action or proceeding.” (§ 1032, subd. (b), underline added.) Section 1032 explicitly
 14 defines “prevailing party” as including: (1) “the party with a net monetary recovery,” (2) “a
defendant in whose favor a dismissal is entered,” (3) “a defendant where neither plaintiff nor
 15 defendant obtains any relief,” and (4) “a defendant as against those plaintiffs who do not recover
any relief against that defendant.” (*Id.* at subd. (a)(4).) “If a party satisfies one of these four
 16 definitions of a prevailing party, the trial court lacks discretion to deny prevailing party status to that
 17 party.” (*Charlton v. Harkey* (2016) 247 Cal.App.4th 730, 741.)

18 Here, Defendants qualify as prevailing parties under three of the above independent criteria
 19 (2-4), any one of which is sufficient to be entitled to mandatory recovery of costs. (*Charlton v.*
20 Harkey (2016) 247 Cal.App.4th 730, 741 [“The new statute provides no exception to a party’s right
*21 to recover costs when the party satisfies any of the four statutory definitions of a prevailing party”].)
 22 Indeed, ***Plaintiff did not receive any monetary recovery or other relief from Defendants,*** and the
 23 dismissal with prejudice was entered in favor of Defendants without Defendants having any
 24 obligations to Plaintiff whatsoever.*

25 Moreover, even Plaintiff's attorney's own correspondence acknowledge that Defendants are

1 entitled to recover their costs in this Action. Specifically, on August 7, 2023, Plaintiff's counsel
 2 sent defense counsel an email attempting to negotiate the waiver of Defendants' right to recover
 3 their costs (and attorneys' fees in a subsequent malicious prosecution action), in exchange for a
 4 global dismissal of all defendants. (Amir Decl. ¶ 2, Exh. A [email from Mr. Mahan to defense
 5 counsel attempting to get Defendants to waive their right to recover costs].) Defense counsel
 6 expressly rejected that offer and insisted that they would recover their costs in this Action once it
 7 was dismissed. (*Ibid.*) In fact, Plaintiff's counsel even reiterated Defendants' intention to recover
 8 their costs at the last hearing held in this Action while he was explaining the Parties intent to stipulate
 9 to a dismissal without Defendants giving up anything or waiving any claims, costs, or fees. (*Id.* at
 10 ¶ 3.)

11 Even if Defendants had been dismissed *without* prejudice (moving Defendants were
 12 dismissed *with prejudice here*), the California Supreme Court has consistently explained that section
 13 1032 provides for mandatory recovery of costs to a defendant who has been dismissed by the
 14 plaintiff *regardless* of "whether it is a voluntary dismissal with prejudice [citation] or without
 15 prejudice [citation]." (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th
 16 1140, 1152, underline added, citing *City of Industry v. Gordon* (1972) 29 Cal.App.3d 90; *Fisher v.
 17 Eckert* (1950) 94 Cal.App.2d 890; *International Industries, Inc. v. Olen* (1978) 21 Cal.3d 218,
 18 superseded by 1986 amendment to statute not inconsistent with this opinion, as stated in *Santisas v.
 19 Goodin* (1998) 17 Cal.4th 599, 602.) This is consistent even with the California Supreme Court's
 20 holdings under the prior version of section 1032 and before it was amended in 1986 to clarify the
 21 four enumerated circumstances in which a defendant is definitively a "prevailing
 22 party." (*International, supra*, 21 Cal.3d at p. 221 [reversing trial court's denial of costs, pursuant to
 23 prior version of section 1032, to defendant who plaintiff dismissed without prejudice]; see *Harkey,
 24 supra*, 247 Cal.App.4th at p. 741; see also *DeSaulles, supra*, at pp. 1149-1151 [explaining history
 25 and purpose of section 1032].)

26 Accordingly, it is undeniable that Defendants are the only prevailing parties in this matter,
 27 and thus entitled to their costs by statute. In contrast, Plaintiff is undoubtedly **not** a prevailing party
 28 as against moving Defendants, and her memorandum of costs must be stricken in its entirety.

1 To the extent Plaintiff attempts to argue (as she does in her frivolous motion to strike
 2 Defendants' Memorandum of Costs) that the class-action settlement bars Defendants from
 3 recovering costs, that contention is both deceptive and meritless, as any such restriction obviously
 4 applies to the class-action lawsuit, not Plaintiff's frivolous Action filed and lost in this Court.
 5 Plaintiff cannot violate the terms of the class-action settlement by bringing this lawsuit, force
 6 Defendants to unjustly incur substantial attorneys' fees and costs, then attempt to claim that
 7 Defendants are somehow not entitled to their costs after having successfully defending this Action
 8 and obtaining dismissals with prejudice in exchange for nothing. This is especially true given
 9 Plaintiff's counsel's own written acknowledgment that Defendants are entitled to recover costs here.
 10 (Amir Decl. ¶ 2, Exh. A.)

11 **IV. EVEN IF PLAINTIFF HAD PREVAILED -SHE DID NOT-HER MEMORANDUM
 12 OF COSTS IS WHOLLY UNSUPPORTED BY EVIDENCE OF RECEIPTS, AND
 SEEKS NUMEROUS COSTS AND EXPENSES FROM UNRELATED LAWSUITS**

13 As established above, Plaintiff is not entitled to any costs at all. Even so, her memorandum
 14 of costs is rife with wholly unsupported claims of costs without any evidentiary support, such as
 15 receipts to prove the costs were actually incurred.

16 Worse, the exhibits in support of Plaintiff's Worksheet in support of Plaintiff's memorandum
 17 of costs establishes that Plaintiff impermissibly seeks costs clearly associated with lawsuits other
 18 than this Action. (See e.g. Plaintiff's Worksheet Exh. 2 [alleged "One Legal" filing fees chart listing
 19 unrelated lawsuits, such as "Mahan v. VW"]; *id.* at Exh. 3 [seeking \$81.75 in costs for seeking a
 20 stay pending appeal an Arizona federal district court case in which Plaintiff voluntarily abandoned
 21 the appeal in any event].) Even worse, Plaintiff's submission in Exhibit 2 is deceptive in that it is
 22 purported to be a list of invoices from One Legal but it is a document created and generated by
 23 Plaintiff's counsel, not One Legal. (Amir Decl. ¶ 6.) One Legal receipts are available for printout
 24 from that service processor, and examples of legitimate receipts from One Legal can be found as
 25 exhibits to Defendants' Memorandum of Costs Worksheet and contrasted to Plaintiff's phony
 26 invoice produced here. (Amir Decl. ¶ 6; Defendants' Memo. of Costs Worksheet Exh. A [true One
 27 Legal receipts].)

28 Likewise, Plaintiff's "proof of service" documents are not receipts or proof of actual

1 payment, and cannot be used to support a claim for costs. In any event, Plaintiff is not entitled to
 2 recover anything because Plaintiff is not a prevailing party under any possibly definition.

3 **V. PLAINTIFF'S FILING A MEMORANDUM OF COSTS AND MOTION TO STRIKE
 4 DEFENDANT'S COSTS WHILE PRETENDING SHE IS THE PREVAILING
 5 PARTY IS AN ABUSE OF CIVIL PROCESS JUSTIFYING SANCTIONS**

6 “The common law tort of abuse of process arises when one uses the court’s process for a
 7 purpose other than that for which the process was designed. It has been ‘interpreted broadly to
 8 encompass the entire range of “procedures” incident to litigation.’” (*S.A. v. Maiden* (2014) 229
 9 Cal.App.4th 27, 41, internal citations omitted.) “To establish a cause of action for abuse of process,
 10 a plaintiff must plead two essential elements: that the defendant (1) entertained an ulterior motive in
 11 using the process and (2) committed a willful act in a wrongful manner.” (*Coleman v. Gulf Insurance*
 12 *Group* (1986) 41 Cal.3d 782, 792, internal citations omitted.)

13 Abuse of process is interpreted more broadly than malicious prosecution and “evolved as a
 14 ‘catch-all’ category to cover improper uses of the judicial machinery that did not fit within the earlier
 15 established, but narrowly circumscribed, action of malicious prosecution.” (*Younger v. Solomon*
 16 (1974) 38 Cal.App.3d 289, 296, internal citations omitted.) However, “[a]buse of process is not just
 17 another name for malicious prosecution. . . . Malicious prosecution and abuse of process are
 18 distinct. The former concerns a meritless lawsuit (and all the damage it inflicted). The latter
 19 concerns the misuse of the tools the law affords litigants once they are in a lawsuit (regardless of
 20 whether there was probable cause to commence that lawsuit in the first place).” (*S.A. v. Maiden*
 21 (2014) 229 Cal.App.4th 27, 41-42, original italics.) In this sense, abuse of process is a wider
 22 reaching tort and even easier to establish than malicious prosecution.

23 Here, Plaintiff’s claims against Defendants were obviously barred from the onset as part of
 24 a class-action settlement that Plaintiff never opted out of. As outlined above, Plaintiff filed this
 25 lawsuit, alleging that the emissions system of her Porsche 911 vehicle is not in compliance with
 26 applicable emissions laws. (Amir Declaration ¶ 2.) Virtually identical allegations were asserted on
 27 behalf of a nationwide class: the Porsche Gasoline Litigation Class Action in *In re: Volkswagen*
 28 “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, N.D. Cal. MDL No.

1 2672 CRB (JSC) (the “Porsche Gasoline Action”). (Amir Declaration ¶ 3.) In that case, the
 2 Honorable Charles R. Breyer has already granted final approval of a class settlement, certifying a
 3 settlement class that encompasses Plaintiff. (Amir Declaration ¶ 4.) Plaintiff was not excluded from
 4 that class according to the official opt-out list maintained by the claims administrator and submitted
 5 to the court. (Amir Declaration ¶ 5.)

6 Plaintiff’s repeat claims against Defendants were thus precluded, as a matter of law, for two
 7 independent reasons. (Amir Declaration ¶ 6.) First, Plaintiff’s claims are barred under the doctrines
 8 of *res judicata* and collateral estoppel. (Amir Declaration ¶ 7.) Second, Plaintiff’s claims are also
 9 barred by a valid and broad written release contained in the settlement. (Amir Declaration ¶ 8.)
 10 Defendants’ counsel brought these arguments to Plaintiff’s counsel on multiple occasions since
 11 being retained to no avail. (Amir Declaration ¶ 9.) Defendants proceeded to request a stay, which
 12 was granted. (Amir Declaration ¶ 10.)

13 Eventually, on September 8, 2023, Plaintiff’s counsel and Defendants’ counsel appeared at
 14 a status conference in front of the Court where they stipulated to have the stay lifted and to have the
 15 case dismissed. (Amir Declaration ¶ 11.) Plaintiff’s counsel then proceeded to file a proposed order
 16 to lift the stay and dismiss Defendants with prejudice, (with only one defendant being dismissed
 17 without prejudice). (Amir Declaration ¶ 12.) Notably, ***Plaintiff did not receive any monetary***
 18 ***recovery or other form of relief in this matter from any defendant.*** (Amir Declaration ¶ 13.) On
 19 October 3, 2023, the Court ordered the entire case dismissed. (Amir Declaration ¶ 14.)

20 As such, this lawsuit has proved to be entirely meritless, and Plaintiff is undoubtedly not a
 21 prevailing party. For Plaintiff to now seek to recover her costs in bringing this suit, which she knows
 22 she is not entitled to, not only wastes the Court’s and the parties’ resources in having to file this
 23 instant Motion, but also subjects her to a claim for abuse of process. Accordingly, Defendants seek
 24 to add their costs related to filing this Motion (\$82.57) and Reply (\$21.83) for a total of \$104.40 in
 25 additional costs, to their Memorandum of Costs already submitted on October 6, 2023.

26 Defendants respectfully request that this Court issue an OSC re: why Plaintiff and/or her
 27 counsel should not be sanctioned for filing a frivolous memorandum of costs and motion to strike
 28 Defendants’ costs while pretending she is the prevailing party here after being forced to dismiss her

1 entire lawsuit which should never have been filed in the first place.

2 **VI. CONCLUSION**

3 For the reasons stated above, Defendants respectfully request that the Court strike Plaintiff's
4 memorandum of costs in its entirety as Plaintiff is not a prevailing party and she is not entitled to
5 her costs. Likewise, Defendants respectfully request an order awarding Defendants their costs
6 pursuant to the memorandum of costs timely submitted by Defendants on October 6, 2023, plus an
7 additional \$104.40 in costs related to having to file this motion and to move to strike Plaintiff's
8 memorandum of costs.

9 Dated: November 3, 2023

10 THE LAW OFFICE OF ABTIN AMIR, PC
11 Abtin Amir

12 By /s/ Abtin Amir

13 Abtin Amir
14 Attorneys for Defendants, Porsche Cars North
15 America, Inc., and Newport Beach Cars, LLC
16 d/b/a Newport Auto Center and d/b/a Porsche of
17 Newport